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NO. 82-1597

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

RODNEY WAYNE ELLIS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

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QUESTIONS PRESENTED

1.

Do the cases used in support of one of the conclusions set out by the State of Georgia in Part Two, I of its argument apply to the case at hand?

2.

Did the State of Georgia entirely misconstrue Petitioner's argument that he was denied effective assistance of counsel by the Trial Court?

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PART ONE

FACTS PERTINENT TO THE SUPPLEMENTAL BRIEF

The Petitioner, RODNEY WAYNE ELLIS, filed a Petition for Writ of Certiorari with this Court from a decision rendered by the Trial and Appellate Courts of the State of Georgia. The State of Georgia filed its brief in opposition to the Petition for Certiorari on May 20, 1983. Because of certain erroneous conclusions and arguments therein, Petitioner files this Supplemental Brief.

PART TWO

I. DO THE CASES USED IN SUPPORT OF ONE OF THE CONCLUSIONS SET OUT BY THE STATE OF GEORGIA IN PART TWO, I OF ITS ARGUMENT APPLY TO THE CASE AT HAND.

The State concludes that the Trial Court did not abuse its discretion by forcing Petitioner ELLIS from attending the rest of the trial against the other two defendants. P. 16, State of Georgia Brief. In coming to that conclusion, the State of Georgia relies on the

following cases. In re United States, 597 F.2d 27 (2nd Cir. 1979); United States v. Moore, 466 F.2d 547 (3rd Cir. 1972); United States v. Meinster, 41 F.Supp. 1112 (S.D. Fla. 1979). The reliance on those cases is misplaced for at least the following reasons. First, those decisions were rendered under Rule 43 of the Federal Rules of Criminal Procedure. Rule 43 of the Federal Rules of Criminal Procedure does not apply to State of Georgia prosecutions. Second, the factual differences between the cases cited and the case at hand is obvious. In two of the cases cited, the defendants sought to absent themselves during their trials for personal reasons, either health or business. In the third case, defendants sought to absent himself during his trial so that an in-court-identification could not be made. Petitioner herein does not seek to waive his presence during his trial either for health or business reasons or to avoid identification. Petitioner here sought to absent himself from the trial after the evidence portion of the trial had ended as against him. In this case, immediately after the State of Georgia rested its case on trial, Petitioner ELLIS rested also. At that point the case against Petitioner ELLIS was ended in an evidentiary sense. As a consequence, and contrary to what the State of Georgia asserts, any evidence after

the State and Petitioner ELLIS rested would not be admissible against Petitioner ELLIS. In light of the above, the support which the State of Georgia finds in the cases cited above is unfounded.

II. DID THE STATE OF GEORGIA ENTIRELY MISCONSTRUE PETITIONER'S ARGUMENT THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BY THE TRIAL COURT.

As to the issue about Petitioner's denial of his right to effective counsel, the State of Georgia misses the point of Petitioner's argument. Petitioner does not say that his counsel was ineffective. Petitioner asserts that the Trial Court denied Petitioner effective assistance of counsel when the Trial Court restricted trial counsel's tactics and strategies in the case at hand. In light of this distinction, the State of Georgia's argument while interesting does not apply to this case.

CONCLUSION

Petitioner respectfully requests that the above matters be taken into consideration on the issue of

whether certiorari should be granted herein. All the rest of the State of Georgia arguments in its Brief have been adequately addressed in Petitioner's initial Brief and need no further elaboration here.

Respectfully submitted,

LAW OFFICES OF EDWIN MARGER

By: Edwin Marger RO
EDWIN MARGER

By: Robert O. Davies
ROBERT O. DAVIES

CERTIFICATE OF SERVICE

I, ROBERT O. DAVIES, Attonrey of Record for Petitioner, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Reply Brief to Respondent's Brief in Opposition to the Petition for Writ of Certiorari, by depositing the requisite number of copies of same in the United States mail, with sufficient postage affixed thereto, and addressed to:

James T. Martin, Esq.
Assistant District Attorney
Cobb Judicial Circuit
Marietta, GA 30060

and to:

Nicholas G. Dumich, Esq.
State Judicial Building
40 Capitol Square, S.W.
Atlanta, GA 30334

This 31st day of May, 1983.

Robert O Davies
ROBERT O. DAVIES